Supreme Court, U.S.
FILED
JAN 10 1994
OFFICE OF THE CLERK

Case No. 93-888

THE SUPREME COURT OF THE UNITED STATES

TERM COMMENCING OCTOBER 4, 1993

BRUCE W. JACKSON and
JEANNETTE L. JACKSON,

Petitioners,

v.

JIM MITCHELL and
JED DAVIS, P.A.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

PETITIONERS' REPLY BRIEF

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REPLY TO ARGUMENTS OF RESPONDENTS

The Respondents in this case have set forth the argument that this case has no federal issue and therefore the Petitioners have failed to establish this Court's jurisdiction under Rule 10.1(b). The Petitioners must again state that the federal issue in this cause is the deprivation of their real property without due process of law. The lower courts have set forth summary judgment in these proceedings and state expert evidence is required in a legal malpractice case to establish the attorney's breach of duty "except in cases where the breach is so obvious that it may be determined by the Court as a matter of Law, or is within the ordinary knowledge and experience of laymen." Jim Mitchell and Jed Davis, P. A. v. Jackson, 627 A.2d 1014, 1017 (ME 1993)

The issue in the underlying cause is that the firm of Mitchell and Davis allowed the statute of limitations to run to near completion before dropping the case into the lap of the Petitioners who had no legal knowledge at that time concerning the legal issues of that case. This circumstance is parallel to one chosen by the Supreme Court of the State

of Hawaii to be an instance when expert testimony is not needed.

It is not an absolute rule that expert testimony be presented to establish the standard of care in all cases involving legal malpractice. Legal malpractice may be sufficiently clear without the advice of experts in which case it is for the trial court to determine the reasonable standard of care, skill and diligence which must be exercised by an attorney. Collins v. Greenstein, 595 P.2d 275 (HI 1979)

Rule 10.1(b) reads when a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeal. In concluding that no expert evidence was needed in the instant case, when clearly the statute of limitations was allowed to run, the Maine Supreme Judicial Court sitting as the law court (that state's highest court) is in direct conflict with the Hawaii Supreme Court (that state's highest court) therefore the issue becomes one of a factual basis rather than a summary judgment issue.

In granting a summary judgment in favor of Mitchell and Davis, P.A., when there is a factual issue to be resolved, the Court has deprived the Jacksons of their right to due process guaranteed under the Fifth Amendment of the United States Constitution. In order for the appellate courts to uphold the summary judgment they must "first view the evidence in the light most favorable to the party against whom judgment was granted." Town of Freeport v. Greenlaw, 602 A.2d (ME 1992) This has clearly not been the case here.

The Respondents also point out that Petitioners did not fulfill Rule 14(h) which requires us to supply specific citations and quotations of "the stage in the proceedings, both in the court of first instance and in the Appellate Courts, at which the Federal questions sought to be reviewed were raised." They also point out that Rule 14(k) requiring the Petitioners to file an appendix has not been met. Petitioners herein say that the reason for not addressing at what point in the proceeding the question was raised is as follows:

1. The issue did not exist in the lowest court until

that Court granted summary judgment in favor of Jim Mitchell and Jed Davis, P.A.

2. The Supreme Court of Maine based its decision on briefs alone. Petitioners here had wanted to give oral testimony at which time the point would have been noted and put on the record; however, the Court decided the action non-testimonial.

Therefore, the issue only exists in the opinions and judgments set down by the Courts. Those opinions and judgments are included in the Petition for Writ of Certiorari and comprise the entire appendix pages A1-A22. Copies were furnished to the Respondents.

Respondents also point to Rule 42.2 and refer to the Petition as frivolous and ask this Court to award damages and costs. Petitioners herein strongly believe that they have been wronged and deprived of their real property without due process of law. In order to regain the property in question, property of many times the value of any legal services, court costs or damages questionably owed the Respondents, they have no other recourse under the Law or Constitution but to ask this Honorable Court to review this

cause of action and uphold their guaranteed right under the Fifth Amendment of our Constitution.

CONCLUSION

Petitioners point out that the Respondents have failed to comply with Rule 29.5, which requires the certificate of service to be separate from the brief in opposition. Petitioners feel that this rule violation should be reason for denial of said brief.

Petitioners also must adamantly state that the attorney for the Respondents is still Petitioners' attorney. The law firm of Mitchell and Davis never petitioned the Court to withdraw as Petitioners' attorney. Therefore, a direct conflict of interest is at hand.

Petitioners also note that the requirement of Rule 33.1(c) has not been met by the Respondents, in that pages in their brief are not doublespaced.

Petitioners thus ask that the brief in opposition be rejected for failure to comply with the rules of this Court.

In conclusion, the Petitioners ask that this Honor-

able Court approve the Petition for Writ of Certiorari and give them the opportunity to present evidence in a court of law. This will allow them to regain possession of their property, or at least afford them their guaranteed right to due process under Amendment V of the Constitution of the United States of America.

Bruce W. Jackson,
Petitioner

Jeannette L. Jackson,
Petitioner